

## Directors and Officers of Foreign Private Issuers Now Subject to Section 16(a) Reporting Requirements

On December 18, 2025, the Holding Foreign Insiders Accountable Act (“HFIAA”) was enacted as part of the National Defense Authorization Act for Fiscal Year 2026. The HFIAA eliminates the long-standing administrative exemption promulgated by the U.S. Securities and Exchange Commission (“SEC”) that the directors and officers of Foreign Private Issuers of SEC-registered equity securities (“FPIs”)<sup>1</sup> have enjoyed from the reporting requirements of Section 16(a) of the U.S. Securities Exchange Act of 1934 (“Exchange Act”).

This legislative change represents a significant expansion of compliance obligations for the directors and officers of FPIs, potentially requiring the implementation of new internal controls, reporting procedures, and disclosure practices by FPIs. The new reporting obligations implemented by the HFIAA will become effective on March 18, 2026.

According to the SEC’s June 2025 Concept Release on FPIs, there are more than 950 existing FPIs (based on the number of issuers that filed Form 20-Fs for the fiscal year 2023) that are SEC registrants under the Exchange Act.<sup>2</sup> Directors and officers of these FPIs will be subject to the new Section 16(a) reporting requirements, to the extent the FPIs have equity securities registered under the Exchange Act. This population includes an overwhelming majority of the over 400 active, issuer-sponsored American depositary receipt (“ADRs”) programs. Note that officers and directors of FPIs that do not have SEC-registered equity securities (e.g., FPIs with ADR programs that trade on one of the OTC Markets who do not file Forms 20-F with the SEC) are not subject to Section 16(a) reporting.

### 1. Scope of the HFIAA

The HFIAA amends Section 16(a)(i) of the Exchange Act to require every director and officer of an FPI that has equity securities registered under the Exchange Act to publicly report its beneficial ownership of, and transactions in, all classes of such FPI’s equity securities. The reports are required not only for all classes of the FPI’s equity, but also *inter alia*, for equity awards, restricted stock units (“RSUs”) and stock options relating to all classes of the FPI’s equity securities.

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<sup>1</sup> An FPI is any issuer which is a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country. A foreign issuer that has 50% or less of its outstanding voting securities held of record directly or indirectly by U.S. residents would qualify for FPI status under the “shareholder test”. A foreign issuer with more than 50% of its outstanding voting securities held by U.S. residents would qualify for FPI status under the “business contacts test” if it has none of the following contacts with the United States: (1) a majority of its executive officers or directors are U.S. citizens or residents; (2) more than 50% of its assets are located in the United States; or (3) its business is administrated principally in the United States. 17 CFR § 230.405. In this Client Alert, unless otherwise specifically noted, any reference to an ‘FPI’ in the context of Section 16 reporting is to an ‘FPI’ that has equity securities registered under Section 12 of the Exchange Act.

<sup>2</sup> Concept Release on Foreign Private Issuer Eligibility. U.S. Securities Exchange Commission. [Release No. 33-11376](#) (June 4, 2025).  
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Importantly, the Section 16(a) reporting requirements apply for director and officers of FPIs even where there is no current beneficial ownership. If a director or officer of an FPI does not beneficially own any equity securities of the FPI, the individual must still file an initial statement of beneficial ownership on Form 3 with the SEC on or before March 18, 2026, affirmatively stating that no equity securities are beneficially owned (*See* Section 2 below).

These reporting requirements also extend to derivative securities (*e.g.*, warrants and convertible notes) and certain indirect holdings, such as ADRs representing equity securities of an FPI. As a result, directors and officers of FPIs who beneficially own ADRs listed on a United States stock exchange or any equity securities of such FPIs will be required to disclose such holdings and all related transactions in both the ADRs and the related equity securities, even if the related equity securities are not traded on a United States stock exchange.

An important note is that the HFIAA only amends the reporting requirements under Section 16(a) of the Exchange Act. Directors and officers of FPIs remain exempt from the short-swing profits disgorgement requirements under Section 16(b) and the short sale restrictions under Section 16(c). Similarly, beneficial owners of FPIs who do not serve as directors or officers remain entirely exempt from Section 16 reporting requirements, but are still required to make the necessary filings under Section 13 of the Exchange Act.<sup>3</sup>

Furthermore, the HFIAA authorizes the SEC to exempt any person, security, or transaction from the Section 16(a) reporting requirements if the SEC determines that the laws of a foreign jurisdiction apply a substantially similar insider reporting regime. As of the date of this alert, the SEC has not adopted any such exemptions under the HFIAA and, as such, the new reporting requirements will apply to all directors and officers of all existing FPIs.

## 2. Section 16(a) Reporting Obligations

The directors and officers of an FPI will be required to report their beneficial ownership of any equity securities issued by such FPI or derivatives thereof by filing electronic statements via EDGAR with the SEC, in English, using the same forms, and subject to essentially the same timelines and conditions, applicable to insiders of U.S. domestic issuers. Accordingly, beginning March 18, 2026, directors and officers of FPIs will be subject to the following reporting requirements under Section 16(a):

- **Form 3 (Initial Statement of Beneficial Ownership):** requires disclosure of beneficial ownership of a reporting FPI's equity securities and derivatives thereof. Filing of the Form 3 is due as follows:
  - (i) for existing directors and officers of FPIs, on or before 10:00 p.m. Eastern Time on March 18, 2026;

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<sup>3</sup> If an FPI has a class of equity securities registered under Section 12 of the Exchange Act, any person who beneficially owns more than 5% of that class must file a Schedule 13D or, if eligible, a Schedule 13G with the SEC pursuant to Sections 13(d) and 13(g). Section 13 and the associated rules impose additional reporting obligations beyond Schedules 13D and 13G; stakeholders should review the statute and implementing rules for a complete description of these requirements.

- (ii) for directors and officers of FPIs appointed after March 18, 2026, within 10 calendar days of becoming a director or officer; and
- (iii) for directors and officers of an FPI going public after March 18, 2026, on or before 10:00 p.m. Eastern Time on the date the FPI's Section 12 securities registration becomes effective.

Note that if a director or officer of an FPI has no beneficial ownership to report, he or she is still required to file a Form 3 reporting zero holdings.

- **Form 4 (Statement of Changes in Beneficial Ownership):** used to report transactions in an FPI's equity securities and derivatives thereof, such as open market purchases and sales, grants of options or restricted stock units, and option exercises. Filing is due before the end of the second business day following the day each such transaction occurred. There is no materiality threshold for the reporting of such transactions.
- **Form 5 (Annual Statement of Changes in Beneficial Ownership):** serves as an annual "catch-up" filing for certain deferred or previously unreported transactions in an FPI's equity securities and derivatives thereof. It is not required if there is no change in ownership or all relevant transactions have been previously reported. Filing is due within 45 days after the FPI's fiscal year-end.

### 3. Practical Implications for FPIs

The Section 16(a) reporting requirements of directors and officers of FPIs are the responsibility of the individual director and officer, not the FPI itself. Nevertheless, the SEC may seek civil penalties and other equitable relief, against either or both the FPI and/or its directors and officers, for violations where non-compliance is systemic or repeated. In addition to potential SEC penalties, FPIs may be subject to heightened public scrutiny and consequent reputational damage.

Historically, U.S. domestic issuers have assumed responsibility for preparing and filing Section 16 reports on behalf of their directors and officers, given the complexity of the rules and the short filing deadlines. Given the additional challenges faced by directors and officers of FPIs – particularly those located outside of the United States or not advised by U.S. counsel – FPIs may consider adopting a similar approach. In doing so, FPIs should assess, among other factors, the level of understanding of its directors and officers of the Section 16(a) reporting requirements, the anticipated volume of reportable holdings and transactions, and its internal capacity to manage the required filings.

Moreover, FPIs must carefully identify which directors and officers are subject to Section 16(a) reporting requirements. Generally speaking, all members of the board of directors or any person performing similar functions, interpreted broadly, are considered directors for the purposes of Section 16(a), including any similar governing body that participates in policymaking or receives regular access to material non-public information. The

term “officer”,<sup>4</sup> on the other hand, is defined based on the functions performed rather than a formal title. While certain officers may have been identified previously as such for purposes of compliance with other securities law regulations, such determinations should be reassessed considering the HFIAA’s scope.

If an FPI determines that it would be more efficient or in its best interest to oversee Section 16(a) reporting on behalf of its directors and officers, it should consider implementing appropriate compliance procedures and administrative processes to ensure timely filing. This may include engaging external counsel and filing agents, establishing effective communication channels with its directors and officers to collect information necessary for reporting, providing training to personnel and its directors and officers on Section 16(a) requirements to facilitate information gathering and filing preparation, and updating insider trading policies or internal disclosure controls, as appropriate.

With respect to equity awards or RSUs, FPIs should consider the establishment of clear communication channels with stock plan administrators or other personnel responsible for tracking vesting events or tax withholding dates that may trigger Section 16(a) reporting requirements. From an administrative standpoint, FPIs should ensure that current and incoming directors and officers have obtained personal EDGAR Next credentials to facilitate the necessary Section 16(a) filings. Furthermore, if the FPI chooses to oversee the Section 16(a) reporting, it should consider obtaining the necessary powers of attorneys from its directors and officers, and arrange for the delegation of filing authority to designated filing agents.

Our Cross-Border Capital Markets team is closely monitoring the SEC’s regulations and guidance addressing the implementation and interpretation of the HFIAA, and can assist with the evaluation of best practices under the HFIAA. Please contact any member of our team with questions about how the adoption of the HFIAA may impact your company and its directors and officers.

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<sup>4</sup> For Section 16 purposes, the term “officer” shall mean the FPI’s president, principal financial officer, principal accounting officer (or controller if no such accounting officer exists), any vice-president in charge of a principal business unit, division or function (*e.g.*, sales, administration, finance), or any other officer or person who performs policy-making functions for the issuer (including certain subsidiary officers that perform such functions for the FPI). Exchange Act Rule 16a-1(f).

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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